

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
v. Plaintiff,) 3:13-CV-00324-LRH-VPC
\$167,070.00 IN UNITED STATES)
CURRENCY,) ORDER
Defendant.)

STRAUGHN SAMUEL GORMAN,)
Claimant.)

Before the Court is Claimant Straughn Gorman’s (“Gorman”) Motion for Attorney Fees and Costs. Doc. #73.¹ Plaintiff the United States of America (“United States”) filed a Response (Doc. #78), to which Gorman replied (Doc. #82). Gorman also filed an Errata to his Motion, which attached relevant portions of a document titled “Transactions Fees & Costs” that had inadvertently been omitted from Gorman’s original Motion. Doc. #79. The United States filed a Supplemental Memorandum in response to this document² (Doc. #84), to which Gorman replied (Doc. #85).

¹ Refers to the Court's docket number.

² The United States initially filed an Objection to Gorman's Errata. Doc. #80. The Court overruled this objection and granted the United States an opportunity to respond to the fees and costs listed in Gorman's Errata. Doc. #83.

1 **I. Facts and Procedural History**

2 This civil forfeiture case arose from a January 23, 2013 traffic stop on Interstate 80 (“I-80”)
 3 near Elko, Nevada at 9:03 am, that led to a search and subsequent seizure of \$167,070.00 found in
 4 Gorman’s motor home.³ Nevada State Trooper Greg Monroe (“Monroe”) stopped Gorman for a
 5 “left-lane violation” because he was driving slowly in the left lane and traffic had backed up behind
 6 his motor home. After asking Gorman questions both related and unrelated to the traffic stop,
 7 Monroe developed suspicion that Gorman’s motor home contained contraband or currency related
 8 to drug trafficking. Monroe requested a canine unit and called for a driver’s license warrant check
 9 and a criminal history check. Soon after, dispatch informed Monroe that no canine units were
 10 available, and Gorman’s license check came back clean. At this point, Monroe asked dispatch how
 11 far away a canine unit was and conducted an El Paso Intelligence Center (“EPIC”) check for law
 12 enforcement activities involving drugs at Gorman’s residence. This check revealed a “DEA hit” on
 13 Gorman involving a transfer of \$10,000 out of the country, but all other checks were negative. At
 14 9:23 am, twenty minutes after the stop began, Monroe informed Gorman that he was not going to
 15 write a ticket, handed him his identification, and said he was free to leave. Immediately afterward,
 16 Monroe began asking additional questions, and eventually asked for consent to search the vehicle,
 17 which Gorman declined. At this point, Monroe told Gorman that he was free to leave, and the first
 18 seizure ended.

19 Monroe then contacted Nevada Highway Patrol (“NHP”) dispatch and informed the
 20 operator that there was a vehicle headed westbound on I-80 from Wells, Nevada, that he strongly
 21 suspected was carrying large amounts of currency. Monroe informed the operator that the only way
 22 to get probable cause to search Gorman’s motor home would be to use a canine unit. NHP dispatch
 23 then informed Elko County Sheriff’s Office Deputy Doug Fisher (“Fisher”) that Monroe had
 24 stopped a vehicle near the 360 mile marker on I-80 and that Fisher might want to follow up with his

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 26 ³ For a more detailed description of the facts of this case, refer to the Court’s Order granting Gorman’s Motion to Suppress. Doc. #72 at 2-8.

1 canine. Monroe also called Fisher directly to relay his suspicions about Gorman and inform Fisher
 2 that Gorman was driving westbound on I-80 from Wells, Nevada, toward Elko. After obtaining
 3 information about the first seizure from Monroe, Fisher began a roving highway patrol and became
 4 stationary between the 302 and 303 mile markers on I-80 near Elko, facing eastbound.⁴

5 At approximately 10:15 am, Fisher observed Gorman's motor home traveling westbound
 6 with the driver's side window obstructed by a curtain that had been pulled forward. Fisher
 7 followed the motor home and observed it drift to the right onto the fog line three times and remain
 8 on the fog line each time for approximately 400 yards. Based on these observed violations of
 9 Nevada traffic laws, Fisher effectuated a traffic stop. Fisher asked questions both related and
 10 unrelated to the traffic stop and requested a records check. The exact timing for the records check
 11 was contested. The dispatch Call for Service Report indicated that another officer, Deputy Prall,
 12 requested a records check approximately six minutes into the stop. Seven minutes into the stop,
 13 Prall requested an EPIC check, which revealed that Gorman had four border crossings, most
 14 recently between the United States and Spain. While waiting for the results of the records check to
 15 return, Fisher attempted to ask more questions but Gorman indicated that he did not want to
 16 answer, noting that he had been pulled over shortly before, and answered many questions during
 17 the first seizure. At this point, Fisher asked Gorman if he would object to a dog sniff around his
 18 motor home. Gorman responded "I have objection, if that means anything." Fisher then conducted
 19 a weapons pat-down of Gorman and asked him to stand twenty to thirty feet in front of the motor
 20 home. Fisher's canine "Euros" then walked around the motor home and positively alerted to the
 21 scent of contraband near the back right compartment of the motor home.

22 Fisher obtained a warrant, and a subsequent search revealed Defendant currency and other
 23 evidence consistent with drug trafficking. The United States filed its Complaint in Forfeiture In
 24 Rem on June 17, 2013 (Doc. #1), and a Motion for Summary Judgment on February 18, 2014 (Doc.

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 26 ⁴ The United States omitted information about the first stop and the communications between Monroe
 and Fisher in its Motion for Summary Judgment and supporting documents. See Doc. #11; Doc. #12.

1 #11). Gorman filed a Motion to Suppress on April 11, 2014. Doc. #18. On July 27, 2014, the
 2 Court denied the United States' Motion for Summary Judgment, deferred ruling on Gorman's
 3 Motion to Suppress, and set an evidentiary hearing. Doc. #28. The Court held an evidentiary
 4 hearing on December 15 and 16, 2014, during which the Court heard deposition testimony of
 5 Monroe, live testimony of Fisher, and reviewed the video of each traffic stop.

6 On June 12, 2015, the Court granted Gorman's Motion to Suppress, finding that the second
 7 traffic stop was unreasonably prolonged without independent reasonable suspicion to justify the
 8 prolongation. Doc. #72 at 19-20; *see Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015)
 9 (holding that while an officer "may conduct certain unrelated checks during an otherwise traffic
 10 stop. . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion
 11 ordinarily demanded to justify detaining an individual"). Finding that Gorman was undoubtedly
 12 the successful party, the Court added that it would consider a Motion for Attorney Fees filed under
 13 the Civil Asset Forfeiture Reform Act ("CAFRA"), 28 U.S.C. § 2465(b)(1)(A) and Local Rule 54-
 14 16. The United States filed a Notice of Appeal on August 11, 2015. Doc. #86. Having reviewed
 15 the parties' briefing and all relevant evidence, the Court grants Gorman's Motion for Attorney Fees
 16 in the amount of \$146,938.50 for those hours reasonably expended by Gorman's attorneys.

17 **II. Legal Standard**

18 CAFRA provides that "in any civil proceeding to forfeit property . . . in which the claimant
 19 substantially prevails, the United States shall be responsible for . . . reasonable attorney fees and
 20 other litigation costs reasonably incurred by the claimant. 28 U.S.C. § 2465(b)(1)(A). Courts
 21 apply the lodestar method to calculate reasonable attorney fees under CAFRA. *United States v.*
 22 *\$186,416.00 in U.S. Currency*, 652 F.3d 753, 755 (9th Cir. 2011). "The 'lodestar' is calculated by
 23 multiplying the number of hours the prevailing party reasonably expended on the litigation by a
 24 reasonable hourly rate." *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). "[T]he
 25 fee applicant bears the burden of establishing entitlement to an award and documenting the
 26 appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

1 The actual fee agreement between the claimant and his or her attorney can also be relevant to a
 2 court's determination of reasonable attorney fees. *\$186,416.00 in U.S. Currency*, 652 F.3d at 755.

3 The number of hours for which the fee applicant is entitled to recover "may be reduced by
 4 the court where documentation of the hours is inadequate; if the case was overstaffed and hours are
 5 duplicated; if the hours expended are deemed excessive or otherwise unnecessary." *Chalmers v.*
 6 *City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). "In determining a reasonable hourly
 7 rate, the district court should be guided by the rate prevailing in the community for similar work
 8 performed by attorneys of comparable skill, experience, and reputation." *Id.* at 1210-11. An
 9 attorney "is not required to record in great detail how each minute of his time was expended," but
 10 should "identify the general subject matter of his time expenditures." *Hensley*, 461 U.S. at 437
 11 n.12. District courts are empowered to reduce attorney fee awards if the "documentation of hours
 12 is inadequate," and courts are encouraged to exclude hours that were not "reasonably expended."
 13 *Id.* at 433; *Sorenson v. Mink*, 239 F.3d 1140, 1146 (9th Cir. 2001). When faced with unreasonable
 14 claimed fees, courts can apply a percentage reduction to reduce the proposed award to a more
 15 reasonable fee award. *Stewart v. Gates*, 987 F.2d 1450, 1452 (9th Cir. 1993).

16 **III. Discussion**

17 Although the United States has filed a Notice of Appeal, the Court again acknowledges that
 18 Gorman has substantially prevailed; the Court granted his Motion to Suppress on June 12, 2015
 19 (Doc. #72) and entered final judgment in his favor on July 7, 2015 (Doc. #75). Thus, the Court
 20 must now determine the amount of attorney fees to which Gorman is entitled. Gorman requests a
 21 total of \$153,002.25 in attorney fees, which represents \$148,317.00 in attorney fees accrued
 22 throughout this litigation⁵ and an additional \$4,685.25 for work expended preparing the motion for
 23 attorney fees. Three attorneys billed hours representing Gorman: (1) Michael Cristalli ("Cristalli"),
 24 a partner at Gentile Cristalli Miller Armeni & Savarese PLLC ("GCMAS"), billing at a rate of \$510

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 26 ⁵ This figure includes \$136,842.00 identified in the Transactions Fees and Costs attached with
 Gorman's errata (Doc. #79, Ex. 1 at 11) and \$11,475.00 billed by Savarese in April and May 2015 as indicated
 by an invoice attached to Gorman's original Motion (Doc. #73, Ex. 1-B at 1).

1 per hour; (2) Vincent Savarese (“Savarese”), a partner at GCMAS and former senior counsel at
 2 Gordon Silver LLC (“Gordon Silver”), billing at \$285 per hour, \$330 per hour, \$400 per hour, and
 3 \$450 per hour at times throughout this litigation; (3) Dylan Ciciliano (“Ciciliano”), an associate
 4 attorney at Garman Turner Gordon, LLP and former associate at Gordon Silver, billing at \$225 per
 5 hour. Doc. #73 at 5-6. Gorman represents that these hourly fees are commensurate with hourly
 6 fees charged by other attorneys with equal experience to Cristalli, Savarese, and Ciciliano. *Id.*
 7 Gorman adds that the majority of complicated Fourth Amendment analysis was conducted by
 8 Savarese, and more basic civil litigation tasks were handled by Ciciliano at his lower billing rate.
 9 *Id.* at 6. Gorman’s Errata includes a detailed list of the fees billed by these three attorneys. Doc.
 10 #79, Ex. 1.

11 The United States does not challenge the hourly fees charged by Gorman’s attorneys except
 12 to note that they should be viewed in light of the underlying fee agreement. Doc. #78 at 8.⁶
 13 However, the United States urges the Court to reduce Gorman’s claimed attorney fees by a fixed
 14 percentage because Gorman’s list of billed fees includes unrelated or vague entries. Doc. #84 at 4.
 15 Specifically, the United States challenges those charges related to conferences and correspondence
 16 with the Elko County District Attorney’s Office as unrelated to this action. Additionally, the
 17 United States challenges certain entries for vagueness, including those labeled “LR forfeiture,”
 18 “review case file status of forfeiture,” “review discovery,” “conference with client,”
 19 “interrogatories,” “prep MTS,” “and other similarly vague entries throughout the billing records.”⁷
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 22 ⁶ Gorman’s Legal Representation Agreement indicates that Gorman made a \$25,000.00 non-refundable
 23 minimum fee retainer, and that all hours expended once the retainer was exhausted would be billed at the
 24 attorneys’ hourly rate. Doc. #82, Ex. A-1 at 1.

25 ⁷ In this Order, the Court primarily considers those fees specifically challenged by the United States.
 26 See D. Nev. LR 54-16(e) (“If an opposition is filed, it shall set forth the specific charges that are disputed and
 state with reasonable particularity the basis for such opposition.”); *Nagy v. Grobstein*, No. 2:04-cv-1244, 2006
 WL 2385383, at *2 (D. Nev. Aug. 17, 2006). However, the Court has conducted an analysis of Gorman’s
 complete list of billed fees to determine if other entries not identified by the United States are improperly
 vague, as reflected in Part III.A of this Order.

1 *Id.* The Court addresses the United States' arguments regarding specific entries before turning to
2 its request for an across-the-board percentage cut.

3 **A. Specific Entries**

4 The Court disagrees with the United States that the entries regarding communications with
5 the district attorney's office should be excluded as irrelevant to Gorman's representation. In
6 addition to seizing Defendant currency, Elko County authorities seized Gorman's motor home and
7 a number of his personal possessions. Gorman argues that communications with the district
8 attorney's office to retrieve this property were therefore directly related to this civil forfeiture
9 action. Additionally, Gorman's attorneys billed a total of four hours for communication with the
10 district attorney's office, which is entirely reasonable given the inter-agency nature of this case.
11 Accordingly, the Court declines to strike those hours reasonably expended in communications with
12 the district attorney's office from Gorman's proposed fee award.

13 The United States challenges two entries billed on April 8 and 9, 2014 titled "Prep MTS,"
14 which represent a total of 17.2 hours billed by Savarese. Gorman's Motion to Suppress was filed
15 soon after these entries, on April 11, 2014. The Court finds that 17.2 hours is a reasonable amount
16 of time for an attorney to spend on a motion to suppress regarding complicated Fourth Amendment
17 issues. The Court notes further that these hours are particularly reasonable given the quality of the
18 motion, which was ultimately successful. Additionally, "Prep MTS" provides sufficient
19 information regarding the subject matter of those charged fees—preparing the motion to suppress.
20 *See Hensley*, 461 U.S. at 437 n.12 (holding that "at least counsel should identify the general subject
21 matter of his time expenditures"). Accordingly, the Court declines to strike those hours reasonably
22 expended preparing Gorman's Motion to Suppress.

23 The United States also challenges four entries from April and May, 2015, because Savarese
24 billed these hours at a rate of \$450 per hour, rather than the average rate of \$334.50 identified in his
25 Motion for Attorney Fees. Doc. #78 at 9; *see* Doc. #73, Ex. 1-B at 1. Gorman's Motion does not
26 state that Savarese billed all of his hours at the hourly rate of \$334.50, but rather that he billed at a

1 rate of \$285 per hour in 2013, \$330 per hour from January 1, 2014, to February 1, 2015, \$400 per
 2 hour beginning February 1, 2015, and \$450 per hour beginning April 2015. Doc. #73 at 6. Gorman
 3 noted that this led to an average lodestar of \$334.50 but at no point stated that this rate would be
 4 applied to all hours billed by Savarese throughout the litigation. Accordingly, the Court declines to
 5 reduce the 25.5 hours billed by Savarese at \$450 per hour in April and May 2015.

6 The United States also argues that entries related to “meeting with client” or “conference
 7 with client” are vague and should be excluded from any fee award. Gorman is correct that the
 8 attorney-client privilege precludes attorneys from including unredacted details of all conversations
 9 with their client in fee logs. *See Fed. R. Evid. 502; MGIC Indem. Corp. v. Weisman*, 803 F.2d 500,
 10 505 (9th Cir. 1986) (acknowledging that in a motion for attorney fees, a party may redact entries as
 11 necessary to protect the attorney-client privilege). However, the proper methodology is to include
 12 the general subject of these meetings while billing but redact privileged information when
 13 submitting the billing entries with the court so that the information remains privileged but the court
 14 can conduct an in camera review if necessary. *See MGIC Indem. Corp.*, 803 F.2d at 505 (“The
 15 court may withhold from [an adverse party] any information it finds protected by the lawyer-client
 16 privilege.”); *Parker W. Int’l, LLC v. Clean Up Am., Inc.*, No. 08-2810, 2009 WL 2002950, at *1
 17 (N.D. Cal. July 6, 2009) (“Billing records may be redacted for privilege, with the unredacted copies
 18 to be submitted to the Court for in camera review.”). The list of Transactions Fees and Costs
 19 includes two types of entries for meetings with client. First, 6.8 hours are identified as meetings
 20 with Gorman, the subject of which are at least partially redacted by black marks. These entries are
 21 proper because they indicate the event, redact the privileged material, but include enough
 22 information for the Court to conduct an in camera review if necessary. Second, another 9.2 hours
 23 are identified merely as “meeting with client” or “conference with client,” without any additional
 24 information identified or redacted. The Court finds that these entries are improperly vague because
 25 no additional information exists upon which the Court could conduct an in camera review if
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1 necessary. Accordingly, the Court will reduce the requested fee award by \$3,945.75 for these
 2 vague entries.⁸

3 The United States also contests three entries for “LR forfeiture” (1.2 hours), “Review
 4 Discovery” (1.1 hours), and “Interrogatories” (1.5 hours). The Court agrees that these entries are
 5 vague. The “LR forfeiture” entry—for “legal research forfeiture”—does not identify any specific
 6 legal issue researched, or the purpose for which the research was conducted. Similarly, the
 7 “Review Discovery” entry does not identify what type of discovery was reviewed, or whether the
 8 entry refers to the United States’ or Gorman’s discovery materials. Similarly, the “Interrogatories”
 9 entry does not identify whether Cristalli was propounding interrogatories, responding to
 10 interrogatories, or reviewing interrogatories. Although the Government did not so request, the
 11 Court also strikes a 0.8 hour September 15, 2014, entry labeled “Research” for vagueness. Because
 12 these four entries are improperly vague, the Court will reduce the requested fee award by an
 13 additional \$2,118.00 for those 3.8 hours billed by Cristalli, and 0.8 hours billed by Ciciliano.

14 **B. Percentage Reduction**

15 A district court can “make across-the-board percentage cuts either in the number of hours
 16 claimed or in the final lodestar figure as a practical means of trimming the fat from a fee
 17 application.” *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992) (internal quotation marks
 18 omitted). Percentage reductions are “subject to heightened scrutiny,” and do not relieve the court
 19 of its obligation to set forth a “concise but clear” explanation of its reasons for granting a particular
 20 fee award. *Id.* at 1400. Courts can impose an across-the-board percentage reduction for
 21 consistently vague billing entries, or impose a percentage reduction for a particular attorney’s vague

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 23 ⁸ This figure includes reductions based on split fees that identify both a vague subject and a non-vague
 24 subject. For example, the figure includes half of a February 25, 2014, 4.10 hour fee entry labeled “Prep MTS;
 25 meeting with MVC, VS and client.” Doc. #79, Ex. 1 at 5. As discussed above, “Prep MTS” is sufficient to
 26 provide the general subject matter of the charged entry. Accordingly, the \$3,945.75 reduction includes half of
 the \$1,353.00 February 25, 2014, entry labeled “Prep MTS; meeting with MVC, VS and client.” The reduction
 also includes half of the fees charged by Savarese pursuant to split entries on March 25, 2013 (\$370.50), August
 27, 2014 (\$528.00), October 7, 2014 (\$1,023.00) and December 11, 2014 (\$825.00), which all include vague
 entries regarding client meetings.

1 description of hours. *See, e.g., Heller v. District of Columbia*, 832 F. Supp. 2d 32, 50-51 (D.D.C. 2011) (declining to impose an across-the-board percentage reduction, but reducing one attorney's 2 billed fees by 25% due to "vague and inadequate descriptions contained in his timesheets"). 3

4 Here, the Court finds that the majority of those hours billed by Gorman's attorneys were 5 reasonably expended, and that an across-the-board percentage reduction is not necessary. The 6 Court acknowledges that this is a significant attorney fee award. But the award is justified given 7 the complexity of the legal issues involved, the numerous motions filed by both parties—including 8 a motion for summary judgment and motion to suppress, time spent conducting discovery, the 9 quality of representation, and the results achieved. The case also involved multiple evidentiary 10 hearings and supplemental briefing following the Supreme Court's *United States v. Rodriguez* 11 decision.

12 The Court notes that the United States' own actions may have increased the hours billed by 13 Gorman's attorneys. In granting Gorman's Motion to Suppress, the Court expressed 14 disappointment that the United States aggressively pursued this forfeiture action while its Motion 15 for Summary Judgment and supporting affidavits contained material omissions concerning the first 16 traffic stop, by Monroe, and communications between Monroe and Fisher that led directly to the 17 second stop, by Fisher. Doc. #72 at 24. It is likely that disclosing information about this first stop 18 earlier in this litigation would have streamlined the issues before the Court and reduced the number 19 of hours reasonably expended by Gorman's attorneys to successfully claim Defendant currency.

20 Based on the foregoing, the Court finds that an across-the-board percentage reduction in 21 Gorman's requested attorney fees is not necessary here. Again, this case involved complex legal 22 issues and multiple complicated motions which required court appearances and detailed pleadings. 23 Importantly, Gorman's attorneys were ultimately successful in litigating the issues before the Court. 24 Additionally, the Court has stricken in their entirety hours identified by the United States that the 25 Court agrees were improperly vague. The Court declines to impose an additional across-the-board 26 percentage reduction.

1 **IV. Conclusion**

2 IT IS THEREFORE ORDERED that Gorman's Motion for Attorney Fees and Costs (Doc.
3 #73) is GRANTED. The United States shall compensate Gorman for reasonable attorney fees in
4 the amount of \$146,938.50.

5 IT IS SO ORDERED.

6 DATED this 24th day of August, 2015.

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8 LARRY R. HICKS
9 UNITED STATES DISTRICT JUDGE

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